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10 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

11 In re:

Supreme Court No. R-17-0020

12 **PETITION TO AMEND THE**
13 **RULES OF PROCEDURE FOR**
14 **EVICITION ACTIONS**

15 **COMMENTS re:**
PROPOSED RULE REGARDING
STIPULATED JUDGMENTS

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17 The undersigned hereby jointly file their Comments and Objections to the
18 Petition to Amend the Rules of Procedure for Eviction Actions (“Petition”)
19 requiring court inquiries of parties and their attorneys for stipulated judgments. As
20 noted to this Court previously, we believe that we are the primary *private* attorneys
21 who appear on behalf of tenants in eviction actions in Maricopa County, as opposed
22 to *pro bono* attorneys. It is our opinion based upon years of experience that the
23 proposed rule will create a significant impediment for countless tenants who use
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1 stipulated judgments as a means of securing a more favorable outcome. Moreover,
2 the proposed rule will effectively eliminate our representation of tenants, as many
3 will no longer be able to afford the services of a private attorney. It should be noted
4 with the imposition of the Rules for Eviction Actions, the ability of many tenants to
5 afford representation was curtailed. These proposed rule changes only add to the
6 unfairness against tenants.
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9 We expect that other interested parties are going to submit comments
10 addressing what they believe are legal issues with the Petition. Such legal
11 arguments will not be addressed herein as the sole purpose of our Comments is to
12 address the negative, practical affect the Petition will have on our clients, the
13 tenants.
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16 We believe that of all the eviction rule petitions that have been submitted
17 since 2009, this Petition regarding stipulated judgments will have the most direct,
18 irreversible negative consequence for tenants. Many will be now be unable to
19 obtain legal counsel and countless others will be deprived of the benefit of
20 stipulations.
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23 As set forth more fully in our Comments to Rule Petition R-16-0040, which
24 is incorporated herein by reference, we believe we are the primary private attorneys
25 who represent tenants in civil actions, including evictions. Unlike *pro bono* or legal
26 aid attorneys, we charge for our services. We give significant consideration to
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1 tenants' financial circumstances—our clients' finances dictate what actions they
2 want us to perform. Adoption of new rules which require unnecessary steps in the
3 eviction process will serve no worthwhile purpose for tenants but will instead
4 increase our attorneys' fees to the point that most tenants will no longer be able to
5 retain us to defend against evictions.
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8 As this Court is aware, an eviction action is an expedited, statutory action,
9 with a limited scope. In most cases, the sole issue is whether rent was timely
10 tendered and what, if any, counterclaims may be raised. It is because of this, and
11 because of the limited funds of our clients, that we are tactical in the actions we
12 take. Most commonly, our clients retain us to resolve the eviction action through
13 negotiations prior to any court appearances. It is often not in our clients' best
14 interest, nor is it practical, for our client to pay attorneys' fees to litigate an eviction
15 even when there are *bona fide* defenses. It is a strategic decision to write a letter or
16 send a draft Motion to Dismiss to the landlord or its counsel, and explain what we
17 believe are the legal or factual defects in the case. From this point, we seek to
18 negotiate either a dismissal of the case where warranted, or a stipulated judgment.
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21 When appropriate, our clients acknowledge the landlord is entitled to
22 judgment, but seek more favorable terms. Through the stipulation process, we are
23 able to get our tenant clients: additional time to vacate; time to pay and stay; the
24 right to have the judgment vacated if they pay in full; or a mutual release from the
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1 lease if the rent is paid in full, thus relieving our clients of future liability. There
2 are many potential variables upon which we can reach favorable stipulated
3 judgments.
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5 The ability to reach such stipulations prior to court is vital to our clients
6 because: (1) it avoids unnecessary attorneys' fees being spent on travelling to court,
7 waiting around and then making perfunctory court appearances; and (2) it prevents
8 tenants from missing work, medical or other important appointments to attend
9 court. The proposed rule would eliminate these benefits and the cost would prevent
10 tenants from hiring private attorneys. A rule that would unnecessarily force tenants
11 to miss work and pay an attorney to attend court, in order to obtain a favorable
12 outcome, directly violates the tenants' interests. Furthermore, a rule that
13 necessarily increases the landlord's attorney's fees harms the tenant as the tenant
14 will bear the brunt of those needless but additional attorney's fees in any settlement.
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19 It is also important to note that in many cases, tenants are unable to afford
20 our services and, where appropriate, we advise them to seek a stipulation
21 themselves. While we obviously believe we are able to obtain more favorable
22 terms for our clients, we have seen many self-represented tenants reach favorable
23 stipulated judgments.
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25 As we have seen in the past two months, if additional steps are imposed in
26 the stipulation process, landlords will be unwilling to engage in such negotiations
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1 with tenants. Such *pro se* tenants therefore will be unable to gain the invaluable
2 changes that they may want in the judgment.
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4 **CONCLUSION**

5 It is our belief that the current proposal was likely set forth with good
6 intentions, but no consideration was given to the practical effect the proposed
7 amendments would have upon tenants. As private tenant attorneys, we strongly
8 oppose the proposed rule change. Perhaps in order to avoid potential harm to
9 tenants by well meaning people, at least one of the undersigned should be included
10 in future deliberations on rules changes and additions as they concern tenants.
11 Accordingly, we respectfully request the court to deny the petition.
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14 RESPECTFULLY SUBMITTED this 14th day of March, 2017.
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16

17 s/ Mark Hyatt Tynan
18 Mark Hyatt Tynan
19 Law Offices of Mark Hyatt Tynan
20

s/ Mark Tucker
Mark Tucker
Law Offices of Mark A. Tucker

21 s/ Jesse Cook
22 Jesse Cook
23 Cook & Price PLC

24 A copy of this comment has been e-mailed
25 this 14th day of March 2017 to:

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